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Report of the Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea

Note by the Secretariat

The present report, submitted to the Human Rights Council pursuant to Council resolution 28/22, is the last to be submitted by the current mandate holder.

Two years have passed since the commission of inquiry on the situation of human rights in the Democratic People's Republic of Korea presented to the Human Rights Council its finding that crimes against humanities had been and were being committed in the country. Regrettably, the situation of human rights in the Democratic People's Republic of Korea has not improved, and the crimes against humanity documented by the commission of inquiry appear to continue. Nonetheless, the situation in the Korean peninsula appears to be improving, as seen in the increasing dialogue and interactions between the Democratic People's Republic of Korea and the Republic of Korea. Public discussions on the future of the Korean peninsula seem more visible, at least in the Republic of Korea. In this regard, the Special Rapporteur stresses that a framework on accountability measures for crimes against humanity and other human rights violations must be a component of discussions on the future of the Korean peninsula, including a unification scenario.

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I. Introduction

1. Two years have passed since the commission of inquiry on the situation of human rights in the Democratic People's Republic of Korea presented to the Human Rights Council its finding that crimes against humanities had been and were being committed in the country (see A/HRC/25/63). Regrettably, the situation of human rights has not improved, and the crimes against humanity documented by the commission appear to continue. Nonetheless, the situation in the Korean peninsula appears to be improving, as seen in the increasing dialogue and number of interactions between the Democratic People's Republic of Korea and the Republic of Korea. Public discussions on the future of the Korean peninsula today are more visible, at least in the Republic of Korea.

2. In the present report, the Special Rapporteur describes how accountability for crimes against humanity should be ensured. Given the serious nature of these crimes, he urges the international community to take bold steps to address them while recalling its duty to prosecute such international crimes. In this way, the Special Rapporteur hopes that concrete steps aimed at achieving accountability for crimes against humanity committed in the Democratic People's Republic of Korea will be taken.

II. Latest developments

3. Since the previous report of the Special Rapporteur submitted to the Human Rights Council in March 2015 (A/HRC/28/71), there have been several important developments pertaining to the situation of human rights in the Democratic People's Republic of Korea.

A. Engagement with the international community

4. In the second of half of 2015, the Democratic People's Republic of Korea again showed willingness to engage with the international community on human rights, probably spurred by the upcoming debate in the General Assembly on the situation of human rights in the country.

5. In September 2015, the Government of the Democratic People's Republic of Korea invited the United Nations High Commissioner for Human Rights to visit the country and expressed its interest in continuing discussions on possible forms of technical assistance by the Office of the High Commissioner (OHCHR). In June 2015, a delegation of the European Union visited the country to hold a political dialogue with the authorities, including on improving the protection of human rights. In October, the Democratic People's Republic of Korea repatriated a national of the Republic of Korea and also permanent resident in the United States of America who had been detained since unlawfully entering the Democratic People's Republic of Korea in April 2015. During 2015, the Democratic People's Republic of Korea repatriated at least three more individuals to the Republic of Korea.

6. On 21 September 2015, the Special Rapporteur participated in a panel discussion on the situation of human rights in the Democratic People's Republic of Korea held during the thirtieth session of the Human Rights Council. The discussion, which was moderated by the former chairperson of the commission of inquiry, touched upon the issues of international abductions, enforced disappearances and related matters. The Democratic People's Republic of Korea, however, rejected the panel discussion, describing it as a politically motivated attempt to change the socialist system of the country.

7. On 17 December 2015, the General Assembly adopted resolution 70/172 on the situation of human rights in the Democratic People's Republic of Korea (119 Member States voted in favour, 19 against and 48 abstained). Like in its resolution 69/188, the Assembly called upon the Security Council to consider referring the situation of human rights in the country to the International Criminal Court.

8. On 10 December 2015, the High Commissioner addressed the Security Council, and briefed it on the situation of human rights in the Democratic People's Republic of Korea.

B. Developments in neighbouring countries

1. Republic of Korea

9. On 4 August 2015, a landmine explosion severely injured two soldiers of the Republic of Korea in the demilitarized zone, leading to weeks of tension between the Democratic People's Republic of Korea and the Republic of Korea. On 25 August 2015, the two countries reached an agreement, which contained several points, including on the holding of talks between authorities to improve bilateral relations, resuming the reunion of families separated as a result of the Korean War, and strengthening exchanges of non-governmental organizations in various fields. On the basis of the agreement, a reunion involving 186 separated families was organized from 20 to 26 October 2015 in the Democratic People's Republic of Korea. Furthermore, on 11 December, a vice-ministerial talk was held between the two countries at the Kaesong industrial complex. The Special Rapporteur welcomes that meeting, which followed a number of interactions between the two countries, and hopes that such meetings will lead to increased opportunities for engagement. In this regard, he also appreciates the significant role played by civil society groups on the ground.

10. Since his previous report, the Special Rapporteur has paid two visits to the Republic of Korea: from 6 to 10 September 2015, at the invitation of the Government, and from 23 to 27 November 2015. During the two visits, he met with senior officials from the Ministry of Foreign Affairs, the Ministry of Justice, the Ministry of Unification and the National Intelligence Service. He also met with representatives of the National Human Rights Commission of Korea, the Korea Institute for National Unification, the Korean Institute for Criminology, the Judicial Policy Research Institute of Korea and the Korean Bar Association, parliamentarians, members of non-governmental organizations, persons who left the Democratic People's Republic of Korea, young people and members of the diplomatic community.

11. During his visit in September 2015, the Special Rapporteur noted the improvement in relations between the two States following the agreement of 25 August, and welcomed the intra-Korean dialogue and people-to-people contacts. He also noted an increase in public discussions in the Republic of Korea relating to the possibility of unification. Such discussions make the work on accountability more urgent. The Special Rapporteur stresses that a framework on accountability measures for crimes against humanity and other human rights violations must be a component of discussions on the future of the Korean peninsula, including the scenario of unification.

12. Consequently, during his visit in November 2015, the Special Rapporteur further explored possible accountability measures, including through meetings with stakeholders relevant to the judiciary in the Republic of Korea. Throughout his visit, the Special Rapporteur stressed that the time had come to move forward on accountability measures. The Special Rapporteur also held talks relating to transitional justice with stakeholders in the Republic of Korea, and stressed that discussion need to be further developed to adopt a

transitional justice process that reflects the unique situation of the Korean peninsula, while ensuring accountability as required under international law.

13. During his visit, the Special Rapporteur also met with a member of a family separated as a result of the Korean War. While welcoming the reunion of family members in October 2015, the Special Rapporteur is seriously concerned that many family members have reached an advanced age; the issue therefore requires urgent and practical solutions shaped with the participation of these victims. In this regard, the separation of families should not be seen as a humanitarian issue, but recognized as a human rights violation that continues to affect families in the two States at multiple levels.

14. The Special Rapporteur expresses his appreciation for the support received from the Republic of Korea throughout his mandate.

2. Japan

15. The Special Rapporteur visited Japan from 18 to 22 January 2016. During his visit, he met with the Minister for Abduction Issues and Minister of Foreign Affairs, senior officials from the Ministry of Foreign Affairs, Ministry of Justice, the National Police Agency, the Cabinet Intelligence Office, the Supreme Court and the Association of Families of Victims Kidnapped by North Korea. He also met with members of the Association of Families of Abductees and other representatives of civil society and journalists.

3. China

16. In October 2015, on the margins of the session of the Third Committee of the General Assembly, the Special Rapporteur met with officials from China to discuss the situation of human rights in the Democratic People's Republic of Korea. The formation of a contact group of countries with close, friendly diplomatic relations with the Democratic People's Republic of Korea was also discussed. The Special Rapporteur reiterated his concern that the forcible repatriation faced by nationals of the Democratic People's Republic of Korea, who in their attempt to leave the country crossed the border to China, was in breach of provisions of international law on non-refoulement. The Special Rapporteur notes the critical role that China plays in bringing concrete and meaningful changes to the situation of human rights in the Democratic People's Republic of Korea, and hopes that the next mandate holder will continue the constructive dialogue that he has had with the Government of China.

C. Efforts by the Office of the High Commissioner

1. Establishment of a field-based structure

17. On 23 June 2015, OHCHR opened its field-based structure in Seoul pursuant to Human Rights Council resolution 25/25. The Office is tasked with strengthening, monitoring and documenting the situation of human rights in the Democratic People's Republic of Korea, improving the engagement and capacity-building of stakeholders and maintaining the visibility of the situation. During the visits conducted by the Special Rapporteur to the Republic of Korea in September and November 2015, he had fruitful discussion with the staff members of the Office, which is now fully operational. The Special Rapporteur welcomes the establishment of this office and hopes that it will build upon and expand the work undertaken by the commission of inquiry and maintain an effective partnership with the next mandate holder.

18. During his visits to the Republic of Korea and Japan, the Special Rapporteur was pleased to observe that officials and civil society actors in both countries were eager to support and cooperate with OHCHR. He reiterates his calls upon all stakeholders, including the Government of the Democratic People's Republic of Korea, to extend their full cooperation to OHCHR. In addition, he urges the Human Rights Council to ensure that the OHCHR field-based presence in Seoul can fulfil all aspects of its mandate effectively, including by ensuring that it is provided with adequate financial resources.

2. Dialogue on technical cooperation with the Government of the Democratic People's Republic of Korea

19. In September 2015, during the meeting between the High Commissioner and the Minister for Foreign Affairs of the Democratic People's Republic of Korea, the Minister invited the High Commissioner to pay a visit to the country. Subsequent discussions were held between the Government and OHCHR on a possible visit. The Special Rapporteur welcomes this positive development, and hopes that the visit be used as an opportunity to improve cooperation between the Government of the Democratic People's Republic of Korea and OHCHR. Such cooperation is critical to facilitate the implementation of the State's international human rights obligations, including the commitments it made during the universal periodic review, and is in accordance with the technical assistance mandate of OHCHR in Seoul.

3. Strategy on accountability

20. In 2014, the commission of inquiry found that crimes against humanity had been and were still being committed in the Democratic People's Republic of Korea. This confirmed the reports of various actors, including those who had left the Democratic People's Republic of Korea, members of civil society, and the current and previous mandate holders. In the two years since the report of the commission of inquiry, there has been no indication that the situation of human rights in the Democratic People's Republic of Korea has changed. Political prison camps remain in operation. Reports of torture and other violations against prisoners in political and ordinary prisons continue. Religious followers reportedly continue to face persecution, and persons attempting to flee the country appear to face harsher treatment than in earlier periods. Food insecurity remains a serious issue. Despite the reported availability of food at private markets, the failure of the public distribution system and the absence of support for those who do not earn adequate cash income have never been properly addressed. Lastly, those persons reportedly abducted from other countries remain missing.

D. Accountability and future of the Korean peninsula

1. Discussions on unification

21. Since August 2015, relations between the two States on the Korean peninsula have improved, as witnessed by the increase in interaction and dialogue. At the same time, the Special Rapporteur noted that public discussions on a possible future unification seemed to be gaining momentum in the Republic of Korea. In addition, the Government of the Republic of Korea appears to be undertaking preparations, including a consideration of the implications of unification for the legal frameworks of the two States.

22. In this new context, the Special Rapporteur stresses that accountability for crimes against humanity must be part of any discussion about the future of the Korean peninsula, including the scenario of unification. International law requires that those who are responsible for crimes against humanity be held accountable. This will require a deep

reflection on how to approach unification and accountability in a way that promotes long-term stability and strengthens the rule of law. Experiences from other States that have undergone a process of transition show that reflection and discussion on possible accountability mechanisms and processes should start at an early stage, and include long-term strategies.

23. For the above reasons, crimes against humanity require prosecution at the national or international levels. As the term implies, crimes against humanity are a concern for all of humanity. Consequently, ensuring accountability for such crimes is an international as much as a Korean challenge and requires the international community to play a role. At the same time, mechanisms, such as truth commissions, reparations and memorialization may complement these processes and provide a durable and practical way of ensuring that as much truth as possible is revealed.

24. A failure to address serious and systemic violations this has the potential to undermine the legitimacy and credibility of the system, and may therefore become a destabilizing factor. In addition, such a failure deprives victims of the justice and guarantees of non-repetition to which they are entitled. Persistent human rights issues, such as systematic discrimination and unequal distribution of wealth and services, must also be addressed. Furthermore, the justice and security sectors would require reform to meet international human rights standards, including through vetting. Without such reforms, prosecution would have little effect in the long term. The question should never be whether to pursue accountability, but rather when and how.[1] Efforts to ensure accountability must take into consideration the risk of a rapid deterioration in the humanitarian situation in the Democratic People's Republic of Korea. In this respect, greater support for humanitarian organizations and other entities that operate in the country is required to mitigate that risk and to enhance their capacity to foresee emergencies.

2. Responsibility to prosecute

25. With regard to accountability, the Special Rapporteur stresses that the finding by the commission of inquiry that crimes against humanity have been and are being committed in the Democratic People's Republic of Korea demands that the international community prosecute those responsible for such crimes, in particular those most responsible for their authorization, ordering and perpetration. In this regard, the Special Rapporteur highlights the preamble of the Rome Statute of the International Criminal Court, which states that "it is the duty of every State to exercise its criminal jurisdiction over those responsible for international crimes". Furthermore, in the Declaration of the high-level meeting of the General Assembly on the rule of law at the national and international levels, the Heads of State and Government and heads of delegation attending the meeting on 24 September 2012 committed to ensuring that impunity is not tolerated for crimes against humanity and gross violations of human rights law, and that such violations are properly investigated and appropriately sanctioned, including by bringing the perpetrators of any crimes to justice, through national mechanisms or, where appropriate, regional or international mechanisms, in accordance with international law.[2]

26. By imposing an obligation to extradite or prosecute, various conventions obligate States to cooperate in combating impunity.[3] An obligation to extradite or prosecute for,

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[1] Guidance note of the Secretary-General on the United Nations approach to transitional justice, 2010, p. 6.

[2] General Assembly resolution 67/1.

[3] International Law Commission, "The obligation to extradite or prosecute (*aut dedere aut judicare*)", para. 1.

inter alia, crimes against humanity is also stipulated in article 9 of the Draft Code of Crimes against the Peace and Security of Mankind, according to which a State party in the territory of which an individual alleged to have committed a crime is found is to extradite or prosecute that individual.

27. The Special Rapporteur again stresses that the continuing situation in the Democratic People's Republic of Korea behoves the international community to take prosecutorial measures in relation to crimes against humanity committed in that country.

E. Structural and operational aspects of an effective process of accountability

1. Crimes against humanity

28. As the commission of inquiry noted, the prohibition of crimes against humanity forms part of the body of pre-emptory norms (*jus cogens*) that bind the entire international community as customary international law (see A/HRC/25/CRP.1, para. 1195). Consequently, individuals who commit crimes against humanity in the Democratic People's Republic of Korea may be held responsible on the basis of customary international law, even though the State is not a party to the Rome Statute of the International Criminal Court and has no provisions against crimes against humanity in its domestic criminal law. The Special Rapporteur also recalls that international law does not permit amnesties for crimes against humanity, particularly in relation to those most responsible for such crimes. Similarly, it is an established principle of international law that acting on the orders of a superior is not a defence for perpetrators of crimes against humanity (see ibid.).

2. Command and superior responsibility

29. The Special Rapporteur also recalls that, according to the principle of command and superior responsibility under international criminal law, military commander and civilian superiors are criminally responsible for failing to prevent or repress crimes against humanity committed by persons under their effective authority and control.[4] Consequently, the criminal responsibility of the uppermost leadership of the Democratic People's Republic of Korea, including the Supreme Leader, for crimes against humanity must be considered, for ordering or instigating such crimes, even if lower-ranking officials carried out the crimes.

3. Principle of complementarity

30. With regard to the obligation to prosecute, it remains the rule that States have primary responsibility to exercise jurisdiction over serious crimes under international law.[5] When national courts are unable to offer satisfactory guarantees of independence and impartiality or are materially unable or unwilling to conduct effective investigations or prosecution, international and internationalized criminal tribunals may exercise concurrent jurisdiction.[6] International and internationalized tribunals are not, however, intended to stand in for domestic courts or to replace domestic obligations to investigate, prosecute and punish. This principle of complementarity rests on a combination of respect for State

[4] Rome Statute of the International Criminal Court, art. 28.
[5] See E/CN.4/2005/102/Add.1, principle 20.
[6] Ibid.

sovereignty and respect for the principle of universal jurisdiction.[7] The principle allows States to exercise jurisdiction and to determine how to proceed with an alleged perpetrator on the basis of its own national law,[8] while accepting that those who have committed international crimes may be prosecuted through international criminal bodies if national processes do not deliver justice.[9]

4. Republic of Korea

31. The Special Rapporteur notes that the Republic of Korea appears to be well positioned to move forward with criminal proceedings, even if not all aspects of crimes against humanity found by the commission of inquiry could be addressed. The Republic of Korea has been a State party to the Rome Statute of the International Criminal Court since 13 November 2002. Furthermore, human rights constitute a major issue in the legal system of the Republic of Korea; Specifically, respect for human rights is a paramount consideration in the Constitution,. The universality of human rights is expressed in various international instruments that have been ratified by the Republic of Korea; consequently, the legal system of the Republic of Korea is protects human rights, and the principle of human rights guides how the legal system operates. Both the Government of the Republic of Korea and accused parties can refer to human rights norms in the legal system. To conform to international human rights standards, and to be credible to all parties, these processes must uphold strict safeguards of the rights of the defendant, including the presumption of innocence. Such a legal system also ensures the dignity of the rights of victims, while ensuring accountability for human rights violations.

32. The most important aspect of such legal prosecutions is that they be complemented by a broader transitional justice approach. Legal prosecution may ensure formal justice in some cases, but a legal system alone may not to be able to cope with the number of perpetrators. Furthermore, it might not be desirable to address all violations through prosecution. The disclosure of the whole truth and other mechanisms through which the dignity of victims can be restored may be equally important for a society to be able to face its past and move towards sustainable peace.

5. Principle of universal jurisdiction

33. The principle of "universal jurisdiction" may also allow for the prosecution of the leadership of the Democratic People's Republic of Korea in a third country. The principle establishes a territorial jurisdiction over persons for extraterritorial events where neither the victims nor alleged offenders are nationals of the forum State and no harm was allegedly caused to the forum State's own national interests.[10] This principle is based on the notion that "certain crimes are so harmful to international interests that States are entitled – and even obliged – to bring proceedings against the perpetrator, regardless of the location of the crime and the nationality of the perpetrator or the victim".[11] This principle is a critical component for the prosecution of alleged perpetrators of crimes of international concern when the alleged perpetrator is not prosecuted in the territory where the crime was committed.[12] Several international instruments, including the four Geneva Conventions of

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[7] Xavier Philippe, "The principles of universal jurisdiction and complementarity: how do the two principles intermesh?" *International Review of the Red Cross*, vol. 88, No. 862 (June 2006), p. 380.

[8] Ibid., p. 388.

[9] Ibid., p. 381.

[10] International Law Commission, "The obligation to extradite or prosecute" (see footnote 3), para. 18.

[11] Mary Robinson, forward to *The Princeton Principles on Universal Jurisdiction* (Princeton, New Jersey, Princeton University, 2001), p. 16.

[12] International Law Commission, "The obligation to extradite or prosecute" (see footnote 3), para. 18.

1949 and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment require State parties to either exercise universal jurisdiction over offences or to extradite alleged perpetrators to another State for prosecution.[13]

34. In reality, the implementation of the above general principle remains limited, given that it depends on national law. States are entitled to grant their courts universal jurisdiction over certain crimes as a national decision. Consequently, the application of the principle of universal jurisdiction has not been uniform. Some States apply a narrow concept, allowing the prosecution only if the accused is available for trial, while others adopt a broader concept that allows for the initiation of proceedings even in the absence of the accused.[14] Trials in a third jurisdiction pursuant to universal jurisdiction suffer the same weaknesses as purely international trials, such as remoteness from the victims and consequently the limited impact in restoring trust in the rule of law, and possible politicization.[15] In the case of the Democratic People's Republic of Korea, the fact that most suspects likely remain also constitutes a serious obstacle to the controversial extent of universal jurisdiction in terms of *in absentia* indictment or trial. Another limitation of trials based on universal jurisdiction is that current customary international law would not allow the prosecution of a sitting head of State; the prosecution of the Supreme Leader of the Democratic People's Republic of Korea is thus precluded.[16]

35. Despite challenges, prosecution based on the principle of universal jurisdiction might present the only opportunity to move forward on establishing criminal accountability, while the possibility of such prosecution may serve as a catalyst for other processes.

6. International Criminal Court

36. While pursuing prosecution in national courts, the Special Rapporteur remains convinced that the Security Council should refer the situation of human rights in the Democratic People's Republic of Korea to the International Criminal Court, as recommended by the commission of inquiry (A/HRC/25/63, para. 94(a)) and subsequently encouraged by the General Assembly in its resolutions 69/188and 70/172. The Security Council could refer the situation in the Democratic People's Republic of Korea to the International Criminal Court on the basis of article 13(b) of the Rome Statute and Chapter VII of the Charter of the United Nations.

37. In the event that the Security Council decided not to refer the situation to the International Criminal Court, the General Assembly could establish a tribunal (A/HRC/25/63, para. 87). In this regard, the General Assembly could rely on its residual powers recognized in, inter alia, its resolution 377 (V) ("Uniting for peace"), which provided that, if the Security Council, because of lack of unanimity of the permanent members, fails to exercise its primary responsibility for the maintenance of international peace and security in any case where there appears to be a threat to the peace, breach of the peace, or act of aggression, the Assembly should consider the matter immediately with a view to making appropriate recommendations to Members for collective measures. Significantly, the resolution was adopted in response to the impasse in the Security Council

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[13] Ibid.

[14] Philippe, "The principles of universal jurisdiction and complementarity" (see footnote 7 above), p. 379.

[15] OHCHR, *Rule-of-Law Tools for Post-Conflict States: Prosecution initiatives* (United Nations, Geneva, 2006), p. 29.

[16] International Court of Justice, Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo *v.* Belgium), judgment of 14 February 2002.

with regard to the Korean War.[17] The combined sovereign powers of all individual Member States to try perpetrators of crimes against humanity on the basis of the principle of universal jurisdiction could also be the basis to establish such a tribunal (see A/HRC/25/CRP.1, para. 1201).

F. Way forward

38. Given the gravity of the violations committed in the Democratic People's Republic of Korea, the international community is obliged to take steps to ensure accountability. As summarized above, there are various practical and legal issues to be further developed. In this regard, there are two main bodies central to moving the accountability agenda forward: the group of experts on accountability, and OHCHR in Seoul.

1. Group of experts on accountability

39. First, a group of independent experts should be formed. The group should have three main responsibilities:

(a) To establish the present state of international law and prevailing State practices on accountability;

(b) To determine an appropriate approach to ensure State accountability of crimes against humanity committed by the Government of the Democratic People's Republic of Korea;

(c) To recommend creative and practical mechanisms of accountability that are most effective in securing truth and justice for the victims of crimes against humanity in the Democratic People's Republic of Korea.

40. In recent years, there have been significant developments in international law with regard to accountability, such as the establishment of the International Criminal Court and other tribunals. Nonetheless, the Special Rapporteur notes with deep concern the prevalence of recourse to amnesties, sometimes in contravention of obligations under international human rights law. Against this background, the group should clearly lay down the international legal ground for accountability.

41. The fundamental steps leading to prosecution are to define crimes, to identify actors and to present evidence of criminal wrongdoing. The commission of inquiry laid the groundwork for these three steps. The urgent challenge now is to determine which methods can be most effectively utilized to hold perpetrators accountable, while allowing victims to know the truth of what happened in the past.

42. Since the commission of inquiry concluded its work, there has been no comprehensive analysis of which models could be most appropriate. Such an analysis should include a review of the types of courts available, advantages and disadvantages in the context of the Korean peninsula, and the possible scope of prosecution. The Special Rapporteur again stresses the importance of the International Criminal Court, while acknowledging that the Court is able to handle only the uppermost leadership. He notes that there is sometimes a temptation to deal with those who do not face prosecution in the International Criminal Court through collective agreements or processes. This approach of dealing with those who have not been brought before the Court carries the risk of entrenching impunity, undermining national legal processes and fostering resentment and

[17] See Christian Tomuschat, "United for Peace: General Assembly resolution 377 (V), 3 November 1950", United Nations, 2014.

the perception of injustice. It denies victims their right to justice, and may set a dangerous precedent that will have an adverse impact on future stability and the rule of law. It would also set another dangerous precedent at the international level.

43. In the course of its work, the group should consider experiences from other countries that have undergone transitional justice processes, in particular those where international criminal justice has been involved. At the same time, the group should provide advice that takes into account the unique situation of the Korean peninsula. As a guiding principle, the group should adopt a victim-centric approach to accountability and give due importance to the protection of the dignity of victims. This would include, in particular, taking into account concerns related to women, children and other marginalized groups.[18]

44. The Special Rapporteur recommends that the panel comprise two or three experts, possibly including the next mandate holder. The group would be expected to start working in June 2016 for six months, with the possibility of extension. The group could submit an interim report to the Human Rights Council at its thirty-third session and a final report at the thirty-fourth session.

2. Field presence of the Office of the High Commissioner

45. The OHCHR field presence in Seoul continues to play a critical role in preparing for future accountability processes. Together with the documentation by the commission of inquiry, evidence gathered by the Office will be particularly important to achieve a more in-depth understanding of the nature and scope of violations, and to determine responsibilities. One key endeavour is the mapping of suspected perpetrators of grave human rights violations and the related chain of command structures. The Office is tasked with undertaking a comprehensive analysis of the structure of the regime. It will also gather the most recent information about developments in the Democratic People's Republic of Korea, including recent violations. The Special Rapporteur invites the OHCHR field presence to conduct this work in consultation with partners. In order to gather the most relevant information, the Office must be guaranteed an enabling environment with the full cooperation from all relevant actors, including Governments, and it must be provided with adequate resources to discharge effectively its mandate.

III. Conclusions and recommendations

46. Two years have passed since the commission of inquiry published its report, in which it found that crimes against humanity had been and were being committed in the Democratic People's Republic of Korea. Regrettably, it does not appear that the situation of human rights in the country has improved, and the crimes against humanity documented by the commission appear to continue. While the Democratic People's Republic of Korea has at times indicated its willingness to engage with the international community on some human rights issues, this has not yet led to any tangible improvement in the situation of human rights.

47. The period covered in the present report was characterized by greater interaction between the Democratic People's Republic of Korea and the Republic of Korea. Discussions on the possibility of unification among government actors and other parties in the Republic of Korea appear to be gaining traction.

48. The international community, while taking advantage of the opportunities for increased interaction between the Democratic People's Republic of Korea and the

[18] Guidance note of the Secretary-General (see footnote 1 above), 2010, p. 6.

Republic of Korea, should also continue to take steps to facilitate holding to account those who have committed crimes against humanity.

49. The Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea calls upon the Human Rights Council:

(a) To extend the mandate of the Special Rapporteur, given that the situation of human rights in the Democratic People's Republic of Korea has hardly improved;

(b) To arrange to have an official communication, by the Human Rights Council, the Special Rapporteur or the United Nations High Commissioner for Human Rights, addressed to the Supreme Leader of the Democratic People's Republic of Korea to advise him and other senior leaders that they may be investigated and, if found to be responsible, held accountable for crimes against humanity committed under their leadership;

(c) To establish a group of independent experts with a mandate (i) to establish the present state of international law and prevailing State practices with regard to accountability; (ii) to determine an appropriate approach to ensure State accountability for crimes against humanity committed by the Government of the Democratic People's Republic of Korea; and (iii) to recommend creative and practical mechanisms of accountability to secure truth and justice for the victims of crimes against humanity in the Democratic People's Republic of Korea. Given the resource constraints faced by the Office of the High Commissioner and its field presence in Seoul, which has its own mandate, the group of experts should be established by the Human Rights Council;

(d) To ensure that the field presence of OHCHR in Seoul tasked with following up on the work of the commission of inquiry can function with independence, has sufficient financial resources and enjoys full cooperation with relevant Member States;

(e) To urge the Government of the Democratic People's Republic of Korea to invite the Special Rapporteur to undertake a visit to the country as soon as possible, without preconditions, in accordance with the terms of reference for country visits by special procedure mandate holders, and more generally to cooperate with the mandate;

(f) To task the Special Rapporteur or OHCHR with the formulation of a comprehensive policy on humanitarian assistance for the Democratic People's Republic of Korea.

50. The Special Rapporteur urges the Government of the Democratic People's Republic of Korea:

(a) To halt immediately the human rights violations identified by the commission of inquiry in its report;

(b) To resume dialogue with the Special Rapporteur, and to consider reissuing the invitations extended to all stakeholders concerned, including the Special Rapporteur;

(c) To establish substantive communications with OHCHR, including with a view to possible technical cooperation through the OHCHR field presence in Seoul;

(d) To engage genuinely in bilateral talks with the Republic of Korea and Japan, and to abide by the terms of bilateral agreements concluded, first and foremost

in the interests of victims of human rights violations, including abductions, and their families;

(e) To cooperate with United Nations human rights mechanisms, including the Special Rapporteur, by granting them access to the country with a view to, inter alia, assisting in and assessing the implementation of the recommendations accepted by the State during the second cycle of the universal periodic review.

51. **The Special Rapporteur calls upon Member States:**

(a) To take concrete steps towards achieving accountability for those responsible for serious human rights violations in the Democratic People's Republic of Korea, including by means of referral by the Security Council of the situation in the country to the International Criminal Court;

(b) To make use of the principle of universal jurisdiction to realize and maximize the potential deterring effect of the findings and recommendations of the commission of inquiry, and thus to help to protect the population of the Democratic People's Republic of Korea from further crimes against humanity;

(c) To ensure that the Security Council holds regular briefings on the situation in the Democratic People's Republic of Korea, with the participation of the United Nations High Commissioner for Human Rights and other relevant experts, including the Special Rapporteur;

(d) To facilitate the work of the field-based structure and the Special Rapporteur, and to provide them with timely access to relevant information and potential witnesses, in particular those who have left the Democratic People's Republic of Korea, who may have information crucial to ensuring accountability;

(e) To involve fully civil society actors in the efforts of Member States to address the situation in the Democratic People's Republic of Korea;

(f) To protect persons from the Democratic People's Republic of Korea who have sought refuge in, or are transiting through, the territory of a Member State by abiding with the principle of non-refoulement.

52. **The Special Rapporteur calls upon the United Nations system as a whole to address the grave human rights situation in the Democratic People's Republic of Korea in a coordinated and unified manner, in accordance with the Secretary-General's Human Rights Up Front initiative.**

53. **The Special Rapporteur calls upon civil society to continue its critical work in raising awareness of the situation of human rights in the Democratic People's Republic of Korea, including by reporting on human rights violations committed by the Government of the Democratic People's Republic of Korea.**

54. **The Special Rapporteur thanks all the partners and stakeholders who extended full cooperation and support during his mandate, and hopes that the common goal to improve the situation of human rights in the Democratic People's Republic of Korea will be achieved in the near future.**